



## STATE BANKING DEPARTMENT

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SUPERINTENDENT OF BANKS

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### **REGULATORY BULLETIN TC-05-01**

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#### **TO: ALL TRUST COMPANIES**

Trust Companies must comply with Arizona statutes and rules A.R.S. § 6-851 *et. seq.* and A.A.C. R20-4-801 *et. seq.* and failure to do so may result in disciplinary administrative action.

#### **Internal Control Examination**

A.R.S. § 6-859(C) requires the annual audit of the licensee's corporate records and trust business to include the "examination of a trust company's internal control structure over the financial reporting and accounting of the trust business plus any reportable conditions of the trust company's internal control structure. For purposes of this subsection, 'reportable conditions' means significant deficiencies in the design or operation of the internal control structure that would adversely affect the trust company's ability to perform its business activities and carry out its fiduciary duties and responsibilities consistent with the safe, sound and lawful operation of the trust business."

In view of ongoing uncertainty on the part of trust company licensees and their contracted certified public accountants regarding the procedures required to fulfill this subsection, this bulletin is intended to clarify that the above quoted statute requires a Report of Controls Placed in Operation and Tests of Operating Effectiveness as set out in the American Institute of Certified Public Accountants Statement of Auditing Standards Number 70 ("SAS 70"). The State Banking Department's examinations will review for compliance beginning in 2006, covering the calendar year ended 12/31/05.

#### **Compliance with Federal and Arizona Anti-Money Laundering Statutes**

A.R.S. § 6-1203(B)(3) specifically requires trust companies to comply with the anti-money laundering laws, A.R.S. § 6-1241 *et. seq.* These statutes cross reference and require compliance with the federal anti-money laundering laws known as the Bank Secrecy Act, 31 United States Code § 5311-5326. Future examinations will review and test for compliance.

**Regulatory Actions to Remove, Suspend, or Prohibit Individual Employees**

Pursuant to A.R.S. § 6-161, the Superintendent has the authority to initiate an administrative action to remove, suspend, or prohibit from participating in the affairs of a trust company any director, officer, employee, agent, authorized delegate or other person engaging in any of the following:

1. Any act, omission, or practice in any business transaction demonstrating personal dishonesty or unfitness to continue in office or participate in the conduct of the affairs of the financial institution or enterprise.
2. A willful violation of the Superintendent's order.
3. Refusal to testify or produce records in response to a subpoena issued by the Superintendent.
4. A conviction of a crime, essential element of which is fraud, misrepresentation, or deceit.
5. Any violation described in 12 United States Code §1818(e)(1).
6. Any violation of this title relative to the financial institution or enterprise.
7. Any act, practice or transaction which in any way would jeopardize the safety and soundness of the financial institution.

If the Superintendent determines that a person falls within any of the categories set forth above or exhibits a pattern or practice of conduct demonstrating unfitness to continue to participate in the conduct of the affairs of a trust company, he or she may be subject to a removal, suspension, or prohibition action.

**NOTICE**

Pursuant to A.R.S. § 6-161(E), a financial institution or enterprise may not employ a person against whom a final removal, suspension, or prohibition order has been issued without the prior written approval of the Superintendent. Final orders will be posted on the Department's website.

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Superintendent of Banks